IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, Respondent, v. ALLEN GENE ENGLUND, Appellant.	No. 39748-0-II UNPUBLISHED OPINION

Worswick, J. — Allen Englund appeals his Thurston County conviction of first degree unlawful possession of a firearm.[1] Through counsel, he challenges the sufficiency of the evidence, contending that the State failed to prove the predicate offense. He also argues that his trial counsel failed to provide effective assistance because she did not object to testimony about that offense. In addition, Englund has filed a statement of additional grounds (SAG), in which he argues that (1) he retained his right to possess firearms because at the time of his prior conviction, the court did not take it away; and (2) his conduct at the time of this offense should be considered self-defense. We affirm.

FACTS

Englund's conduct came to the attention of authorities because of a fire in his mobile home. Firefighters who responded found him very agitated and uncooperative. He had a scrape

[1] A commissioner of this court initially considered this matter pursuant to RAP 18.14 and referred it to a panel of judges.

on his forehead that was bleeding, but he refused medical attention, and he repeatedly tried to re-enter the mobile home, although firefighters warned him that it was unsafe. Ultimately, he did re-enter, and he came out with a rifle. When he started to cock the firearm, the assistant fire chief wrestled it away from him and removed the bolt. Sheriff's Deputy Ryan Hoover subsequently took possession of the rifle.

At trial, the State presented a certified judgment and sentence, showing a second degree burglary conviction for Allen Englund in Lewis County in 1976. It was admitted without objection. Also without objection, Deputy Hoover testified that he had verified that this defendant was the same Englund named in the 1976 judgment and sentence. He had done so via the "NCIC III," which is a record "run by the State Patrol" and "fingerprint oriented." Report of Proceedings at 44.

The jury convicted Englund as charged, and the trial court imposed a sentence of 17 months, the middle of the standard range.

ANALYSIS

We first address the challenge to the proof of the predicate offense. Evidence is sufficient to support a conviction if, viewed in the light most favorable to the prosecution, it permits any rational trier of fact to find the essential elements of the crime beyond a reasonable doubt. *State v. Montgomery*, 163 Wn.2d 577, 586, 183 P.3d 267 (2008); *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). "A claim of insufficiency admits the truth of the State's evidence and all inferences that reasonably can be drawn therefrom." *Salinas*, 119 Wn.2d at 201. In determining whether the necessary quantum of proof exists, the reviewing court need not be

convinced of the defendant's guilt beyond a reasonable doubt, but only that substantial evidence supports the State's case. *State v. McKeown*, 23 Wn. App. 582, 588, 596 P.2d 1100 (1979).

As Englund correctly argues, where a prior judgment is an element of the current crime charged, identity of names alone is not sufficient proof to permit the tier of fact to consider the prior judgment. *See State v. Huber*, 129 Wn. App. 499, 502, 119 P.3d 388 (2005); *State v. Hunter*, 29 Wn. App. 218, 221, 627 P.2d 1339 (1981). Here, in addition, there was Deputy Hoover's testimony that he had verified the identity through the State Patrol records system.

Englund contends that this testimony, too, was inadequate because there was no foundation for it, pointing out that the deputy did not explain what the State Patrol system was or how he used it to verify Englund's identity. The testimony was sufficiently corroborative of the judgment and sentence to establish a prima facie case. At that point, it became Englund's burden to produce evidence that would cast doubt on the identity of the person named in the 1976 judgment. *See Hunter*, 29 Wn. App. at 222. He did not do so. Accordingly, that evidence was sufficient to support the jury's determination.

Englund next contends that trial counsel failed to provide effective representation because she did not challenge the evidence of the 1976 conviction. To demonstrate ineffective assistance of counsel, he must show that his attorney's performance fell below an objective standard of reasonableness and that the deficient performance prejudiced him. *Strickland v. Washington*, 466 U.S. 668, 687-88, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984). He must affirmatively prove prejudice, showing a reasonable probability that the outcome would have been different, not just that there could have been some "conceivable effect" on the proceedings. *See State v. Crawford*,

159 Wn.2d 86, 99, 147 P.3d 1288 (2006).

In reviewing a claim of ineffective assistance, we engage in a strong presumption that counsel was effective. *State v. McFarland*, 127 Wn.2d 322, 335, 899 P.2d 1251 (1995). Additionally, legitimate trial tactics and strategy form no basis for an ineffective assistance of counsel claim. *State v. Hendrickson*, 129 Wn.2d 61, 77-78, 917 P.2d 563 (1996). We evaluate the reasonableness of counsel's performance from counsel's perspective at the time of the alleged error and in light of all of the circumstances. *Riofta*, 134 Wn. App. at 693.

Here, defense counsel knew absolutely that Englund had committed the 1976 crime. He repeatedly admitted it in court, outside the presence of the jury. He wanted counsel to argue that he had a right to possess firearms because this right had not been taken away from him at the time of the earlier conviction. In fact, defense counsel and the deputy prosecutor had discussed this issue before trial. Defense counsel could reasonably have assumed that (1) the State's abbreviated examination of Deputy Hoover was based on the assumption that the prior conviction was acknowledged; and (2) in the face of a challenge, the State would simply elicit more detailed testimony. However, Deputy Hoover could have provided adequate information to overcome such a challenge. Englund has demonstrated neither deficient performance nor prejudice.

In his SAG, Englund reiterates the argument he made to the trial judge, asserting that the earlier court did not take away his right to possess firearms. Assuming he had no notice of the prohibition in 1976, it was, nevertheless, properly charged here. Knowledge of the law is presumed, and notice of this prohibition is not required for individuals who committed predicate offenses before July 1994. *See State v. Sweeney*, 125 Wn. App. 77, 83-84, 104 P.3d 46 (2005);

State v. Reed, 84 Wn. App. 379, 384, 386, 928 P.2d 469 (1997).

Finally, Englund asserts that he was acting in self-defense when he retrieved his rifle after the fire, asserting that some "kids" attacked him while he was asleep and set fire to his mobile home. Of course, at the time he retrieved the rifle, there was no immediate threat. More importantly, he had been in possession of the firearm before there was any threat; he cannot rely on the circumstances of the fire as a defense. *See State v. Jeffrey*, 77 Wn. App. 222, 226-27, 889 P.2d 956 (1995).

Affirmed.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record pursuant to RCW 2.06.040, it is so ordered.

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Worswick, J.

We concur:

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Hunt, P.J.

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Quinn-Brintnall, J.